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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548**

**FILE: B-186770**

**DATE: MAR 18 1977**

**MATTER OF: Bruce Adams, et al. - Change in Per Diem Rate**

**DIGEST:**

Civilian employees of the Mare Island Naval Shipyard who performed temporary duty in Guam between September 16, 1975, and January 13, 1976, are only entitled to per diem at the \$49 rate prescribed by Joint Travel Regulations, Change No. 57, dated September 16, 1975, and made effective that date, notwithstanding that notification of the reduction in per diem rate from \$56 was not received at the Shipyard until January 13, 1976.

This is in response to a letter dated June 8, 1976, reference NCV-123 4600, from the Commander, Navy Accounting and Finance Center, requesting an advance decision in the case of Bruce Adams, et al. Transmitted with that letter is a request from the Commander, Mare Island Naval Shipyard, for a decision as to the propriety of authorizing payment of per diem allowances at a rate of \$56 (the rate in effect prior to September 16, 1975), to certain civilian employees (a total of 227) of the Mare Island Naval Shipyard who performed temporary duty at Guam, Marianas Islands, on or after September 16, 1975, but before January 13, 1976.

On September 16, 1975, Civilian Personnel Per Diem Bulletin No. 57 was issued by the Per Diem, Travel and Transportation Allowance Committee, reducing the maximum per diem rate for Guam from \$56 to \$49 effective as of that date. That bulletin was not received by the Navy Regional Finance Center, Treasure Island, San Francisco, until October 14, 1975. The Mare Island Naval Shipyard was not notified of the reduction in per diem rates until January 13, 1976, when it received Change No. 122 to the Joint Travel Regulations (JTR), Volume 2, dated December 1, 1975. Consequently, Mare Island Naval Shipyard employees assigned to temporary duty in Guam from September 16, 1975, to January 13, 1976, were erroneously authorized per diem at the previously effective rate of \$56.

The Commander of the Mare Island Naval Shipyard suggests that two decisions of this Office, 32 Comp. Gen. 315 (1953) and

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B-163891, May 29, 1968, may be in conflict. As a result he is uncertain whether the \$49 per diem rate became effective September 16, 1975, or at some later date in view of his installation's delayed receipt of notice of the change.

We have reviewed both of the cited decisions and do not find them to be in conflict. In 32 Comp. Gen. 315, supra, we held that it was improper to amend regulations to retroactively increase or decrease per diem rates. We there held that the Air Force could not issue regulations on January 1, 1952, reducing per diem rates as of November 1, 1951. This case is to be distinguished from the situation in which a regulation is amended to reflect an increase or reduction in rates which has otherwise become effective by regulation, as where the JTR is amended to reflect per diem rate changes for foreign areas prescribed in the Standardized Regulations (Government Civilians, Foreign Areas). B-173927, October 27, 1971.

Unlike 32 Comp. Gen. 315, supra, the circumstances in B-163891, supra, involved a prospective change in per diem rates. There we held that an employee who was not notified of a change in regulations decreasing the applicable per diem rate was nevertheless entitled to payment of per diem only at the lower rate. The rule that amendatory regulations changing per diem rates have the force and effect of law and are applicable from the stated effective date thereof is applicable not only to cases where the individual employee has not received notice of the increase or decrease in rate, but also to cases in which the installation responsible for the employee's temporary duty assignment is not on actual notice of the amendment. Thus, in B-183633, June 10, 1975, we held that an employee assigned to training beginning September 10, 1973, was not entitled to per diem on a lodgings-plus basis not to exceed \$25 per day, but was only entitled to \$14 per diem in accordance with a regulatory change in rate issued effective September 1, 1973, notwithstanding the fact that the employing activity did not receive notice of the change to the regulations. In that case, the employee's travel orders authorized per diem in accordance with the JTR and stated no specific amount. The employee, however, had been advised that he would be reimbursed on a lodgings-plus basis, not to exceed \$25 per day. A similar result was reached in B-173927, supra, and in B-182324, July 31, 1975.

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In B-177417, February 12, 1973, we considered the effect of delayed notification of a change in per diem rates on an employee whose travel orders specified a per diem rate of \$25 per day. The travel orders in question were issued September 11, 1970, and failed to reflect a reduction in per diem for long-term training to \$18 effective July 1, 1970. The employee's installation had not received advance notice of the rate change disseminated to field offices, nor did it receive the JTR change until after the employee's training assignment had begun. We there held that there was no authority to prescribe a rate of per diem in excess of \$18 regardless of the fact that neither the employee nor his installation had received notice of the change. This rule applies to both increases and decreases in per diem rates. B-177665, March 9, 1973, and B-184789, October 30, 1975.

In accordance with the foregoing authorities, employees of the Mare Island Naval Shipyard performing temporary duty in Guam during the period from September 16, 1975, to January 13, 1976, may be paid per diem only at the \$49 rate, effective September 16, 1975.

R. F. KELLER

Deputy Comptroller General  
of the United States